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INSTRUCTION NO. _____

Introduction

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law. Remember to review the preliminary instructions in addition to these instructions. You must not single out some instructions and ignore others because all are important. This is true even though those I gave you at the beginning of, or during, the trial are not repeated here.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices, or emotions.

INSTRUCTION NO. _____

Corporate Party's Agents and Employees

When a corporation is involved, of course, it may act only through natural persons as its agents or employees; and, in general, any agent or employee of a corporation may bind the corporation by his acts and declarations made while acting within the scope of his authority delegated to him by the corporation, or within the scope of his duties as an employee of the corporation.

INSTRUCTION NO. _____

Fraudulent Misrepresentation

Plaintiffs allege that Defendant William Mitchell, acting on behalf of himself and Bill Mitchell Swine Service, made representations to Plaintiffs that were false, that Plaintiffs justifiably relied on those representations, and that they were damaged as a result. Defendants deny making any false representations to Plaintiffs or engaging in any other fraudulent conduct.

To prove their fraudulent misrepresentation claim, Plaintiffs must prove each of the following numbered propositions 1 through 8, by a preponderance of clear, satisfactory, and convincing evidence:

1. *Defendant William Mitchell made representations to Plaintiffs concerning one or more of the following a, b, and c:*

- a. that Mitchell had purchased, or intended to purchase, the general partnership interest in SHUSA; or
- b. that he had assumed responsibility for SHUSA's operations; or
- c. that he would see to it that SHUSA's contractual obligations to the Plaintiffs were paid in full.

? A "representation" is any word or conduct asserting the existence of a fact. A representation of fact includes a promise to perform a future act.

? A representation also includes an opinion. An opinion is a statement of a person's belief that a fact exists, or the person's judgment as to quality, value, authenticity, or similar matter. A representation of fact implies that the maker has definite knowledge or information supporting the statement; a representation of opinion does not. You must consider all of the surrounding circumstances, including the exact words used, in deciding whether a representation is one of fact or opinion.

2. *The representations were false.*

? Any representation made to perform an act in the future is considered “false” only if the representation was false when it was made. In other words, in order to be “false,” a defendant must have had no intention of performing the future act at the time the representation was made.

? The mere failure to carry out a promise is never enough to establish falsity or intent to deceive. The law recognizes that circumstances and situations change, and permits a party to not perform a representation or promise so long as the party does not make the statement or promise with the present intent not to perform. For that reason, the fact a defendant did not perform any promise or representation he made does not prove that at the time the statement or promise was made, the defendant had no intention of performing the act in the future. When promises or representations are made in good faith, with the expectation of carrying them out, the mere fact that the promise or representation is not later performed is not a basis for liability.

3. *The representations were material.*

? A representation is “material” if:

- a. A reasonable person would consider it important in making a decision;
or
- b. The defendant knows or has reason to know that the plaintiff considers, or is likely to consider, the representation as important in making a decision; or
- c. The representation influences a person to enter into a transaction that would not have occurred otherwise.

4. *Defendant William Mitchell made the representations knowing they were false, or made them recklessly and without regard to their truth or falsity.*

? A defendant knew a representation was false if any of the following situations existed:

- a. The defendant actually knew or believed the representation was false; or
- b. The defendant made the representation without belief in its truth or in reckless disregard of whether it was true or false; or
- c. The defendant falsely stated or implied that the representation was based on his personal knowledge or investigation; or
- d. The defendant made a representation that he knew or believed was materially misleading because it left out unfavorable information; or
- e. The defendant stated his intention to do or not to do something, when he did not actually have that intention; or
- f. The defendant knew the representation could be understood in both a true and false manner, and made the representation (a) intending that it be understood in the false sense, (b) having no belief as to how it would be understood, or (c) in reckless disregard of how it would be understood.

5. *Defendant William Mitchell intended to deceive Plaintiffs.*

? A defendant intended to deceive a plaintiff if any of the following situations existed when he made a representation:

- a. The defendant wanted to deceive the plaintiff, or believed that the plaintiff would in all likelihood be deceived; or
- b. The defendant had information from which a reasonable person would conclude that the plaintiff would be deceived; or
- c. The defendant made the representation without concern for the truth.

- ? A defendant is liable only to a person whom he intended or had reason to expect would act or refrain from acting in reliance on the representation. A defendant would have had reason to expect a result if the defendant had information from which a reasonable person would conclude that a result would follow.
- ? A defendant is liable only to those persons who rely on the representation in the type of transaction in which the defendant intended or had reason to expect the conduct of others would be affected.
- 6. *Plaintiffs acted with ordinary prudence in relying on the truth of the representations, and they were justified in relying on the representations.*
- ? It is not necessary that the representation be the only reason for the plaintiffs' action. It is enough if the representation was a substantial factor in bringing about the action.
- ? Whether reliance is justified depends on what the plaintiffs can reasonably be expected to do in light of their own information and intelligence. Reliance is not justified if the representation is of an unimportant fact or is obviously false.
- ? The plaintiffs are justified in relying on the defendants' representation of opinion only if one or more of the following situations exist:
 - a. The defendant has or claims to have special knowledge of the matter that the plaintiffs do not have.
 - b. The defendant has a fiduciary or other similar relation of trust and confidence with the plaintiffs.
 - c. The defendant has successfully tried to gain the plaintiffs' confidence.
 - d. The defendant knows of some special reason to expect that the plaintiffs will rely on the opinion.

7. *The representations were a proximate cause of Plaintiffs' damage.*
- ? The representations were a proximate cause of Plaintiffs' damage if:
- a. but for the misrepresentations, the Plaintiffs' injury would not have occurred; and
 - b. the Defendant's misrepresentation was a substantial factor in bringing about the Plaintiffs' harm.
8. *The amount of damage.*

If Plaintiffs have failed to prove any of these numbered propositions 1 through 8, by a preponderance of clear, satisfactory, and convincing evidence, Plaintiffs cannot recover damages.

If Plaintiffs have proved all of these numbered propositions, Plaintiffs are entitled to recover damages in some amount. If you find William Mitchell made these representations while acting within the scope of his authority delegated to him by Bill Mitchell Swine Service, then both William Mitchell and Bill Mitchell Swine Service are liable for any damages on this claim proved by Plaintiffs. If, however, you find William Mitchell did not make these representations while acting within the scope of his authority delegated to him by Bill Mitchell Swine Service, then only William Mitchell, as an individual, is liable.

The measure of actual damages for fraud is an amount that would place Plaintiffs in as good a position as they would have enjoyed, if the Defendant's representations had been true.

The actual damages you award for fraud must be foreseeable or have been reasonably foreseen at the time the representation was made.

INSTRUCTION NO. _____

Promissory Estoppel

Plaintiffs next allege Defendant William Mitchell, acting on behalf of himself and Bill Mitchell Swine Service, made clear and definite promises to Plaintiffs, and that Plaintiffs relied on those promises to their detriment. Plaintiffs' claim is based on a concept known in the law as promissory estoppel.

To establish their claim for promissory estoppel, Plaintiffs must establish each of the following numbered elements, 1 through 5, by a preponderance of evidence that is clear, satisfactory, and convincing:

1. *Defendant William Mitchell made clear and definite promises to Plaintiffs that:*
 - a) SHUSA's contractual obligations to Plaintiffs would be paid in full; or
 - b) SHUSA's arrearage would be paid pursuant to the payment schedule.
- ? A defendant made a "clear and definite" promise only if it was clearly stated and definite in nature. A promise is not clear and definite within the meaning of this instruction if the promise contains indefinite terms, is ambiguous, makes performance of the promise optional, or is conditioned on some other act or event.
- ? A defendant may bind himself to pay a previously existing corporate debt.
2. *When the promises were made, Mitchell should have reasonably expected the promises would induce Plaintiffs to act;*
3. *Plaintiffs reasonably relied on Mitchell's promise to their detriment;*
- ? Reliance is considered reasonable if a defendant could have foreseen that any promise he made to the plaintiffs would cause the plaintiffs to act in the manner the plaintiffs claim they did, and if the plaintiffs' actions were a reasonable response to the defendant's alleged promises. Furthermore, a person relies to their detriment only if their reliance on a person's promise placed them in a

worse position than they would have been had they not relied on the promise.

4. *The promise was the proximate cause of Plaintiffs' damage; and*
- ? The promise was the proximate cause of Plaintiffs' damage if:
 - a. but for the promises, the Plaintiffs' injury would not have occurred; and
 - b. the Defendant's promise was a substantial factor in bringing about the Plaintiffs' harm.
5. *The amount of damage.*

If Plaintiffs have failed to prove any of these numbered propositions 1 through 5, Plaintiffs cannot recover damages.

If Plaintiffs have proved all of these numbered propositions, Plaintiffs are entitled to recover damages in some amount. If you find William Mitchell made these representations while acting within the scope of his authority delegated to him by Bill Mitchell Swine Service, then both William Mitchell and Bill Mitchell Swine Service are liable for any damages on this claim proved by Plaintiffs. If, however, you find William Mitchell did not make these representations while acting within the scope of his authority delegated to him by Bill Mitchell Swine Service, then only William Mitchell, as an individual, is liable.

The measure of actual damages for promissory estoppel is an amount that would place Plaintiffs in as good a position as they would have enjoyed, if the Defendant's promise(s) had been kept; or will reimburse Plaintiffs for the loss caused by their reliance on the promise(s).

The damages you award must be foreseeable or have been reasonably foreseen at the time the promise was made.

INSTRUCTION NO. _____

Breach of Contract – De Facto Partner

Plaintiffs contend Defendant William Mitchell is individually liable for any contractual obligations SHUSA owed to Plaintiffs, because Defendant Mitchell acted as if he was a general partner of SHUSA and Plaintiff transacted business with SHUSA reasonably believing, based on Mitchell's conduct, that Mitchell was a general partner of SHUSA. Mitchell denies he was ever a general partner of SHUSA, or ever acted as if he was the general partner of SHUSA, and he asserts he at all times remained only a limited partner with respect to SHUSA's limited partnership.

A limited partner is not liable for the debts or obligations of a limited partnership, unless the limited partner becomes a general partner or participates in the control of the partnership business. If a limited partner does participate in control of the business of the limited partnership, he is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

To prevail against Defendants on this theory, Plaintiffs must establish all the following numbered propositions by a preponderance of the evidence:

1. William Mitchell became a general partner of SHUSA, or participated in the control of SHUSA's business operations; and
2. Plaintiffs transacted business with SHUSA, reasonably believing, based on Mitchell's conduct, that Mitchell was a general partner of SHUSA; and
3. The amount of damage resulting from SHUSA's failure to perform any contractual obligations it owed Plaintiffs.
- ? The measure of actual damages for breach of contract is an amount that would place Plaintiffs in as good a position as they would have enjoyed, if the contract had been performed; or that will reimburse Plaintiffs for the loss caused by their reliance on the contract, and will place Plaintiffs in as good a position as if the

contract had not been made.

- ? The damages you award for breach of contract must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract.

If you find that Plaintiffs have established each of these numbered elements by a preponderance of the evidence, then you should return a verdict for Plaintiffs. If on the other hand, you find that Plaintiffs have failed to establish any one or more of these three elements, then you must find for Defendant William Mitchell.

INSTRUCTION NO. _____

Control of Limited Partnership's Business

With respect to the Instruction on Breach of Contract--De Facto Partner, to establish that Defendant William Mitchell participated in the control of SHUSA's business, Plaintiffs must prove Mitchell participated in control of SHUSA's business by having an equal voice in the ultimate decision making responsibility with respect to the partnership.

A limited partner does not participate in the control of the business solely by performing certain acts, including one or more of the following:

1. consulting with and advising a general partner with respect to the business of the limited partnership; or
2. guaranteeing or assuming one or more specific obligations of the limited partnership; or
3. participating in day-to-day operations; or
4. requesting or attending a meeting of partners of the limited partnership.

In determining whether Mitchell participated in control of SHUSA, you may consider the following factors:

1. The purpose for which SHUSA was established;
2. The specific activities, if any, Mitchell undertook on behalf of SHUSA;
3. The manner in which SHUSA actually functioned; and
4. The nature and frequency of Mitchell's alleged activities.

INSTRUCTION NO. _____

No Quotient Verdict

In arriving at an item of damage or any percentage of fault, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or element of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. _____

Jurors' Duties

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your presiding juror. That person will preside over your discussions and speak for you here in court. The person so elected is responsible for the orderly, proper, and free discussion of the issues by any juror who wishes to express his or her views. He or she will supervise the balloting and sign the form or forms of verdict that are in accord with your decision and will also sign any written inquiries addressed to the Court. Requests regarding instructions are not encouraged. Questions regarding the law are normally fully covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges – judges of the facts. Your sole interest is to seek the truth from the evidence in the case. Your verdict must be unanimous.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible after conferring with counsel, either in writing or orally in open court. Remember that you should not tell anyone – including me – how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

Finally, I am giving you the verdict forms, which is the written notice of the decision that you reach in this case. You will take this form to the jury room, and complete it when you have reached a verdict.

IT IS SO ORDERED.

Dated at _____ a.m./p.m. on this _____ day of May, 1999.

CELESTE F. BREMER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

TAI FARMS OF TENNESSEE, INC.,
and JADE FARMS OF KENTUCKY,
INC.,

Plaintiffs,

vs.

WILLIAM MITCHELL, and :
WILLIAM C. MITCHELL, LTD. :
d/b/a Bill Mitchell Swine Service, :
an Iowa Corporation, :

Defendants. :

CIVIL NO. 4-98-CV-20055

SPECIAL VERDICT FORM

The jury makes the following findings on Plaintiffs' claims:

A. Fraudulent Misrepresentation Claim

1. Have Plaintiffs established by a preponderance of clear, satisfactory and convincing evidence their claim of fraudulent misrepresentation:
_____ yes _____ no

2. **Proximate Cause**

Answer question 2, if, and only if, you answered yes to question 1.

Did Plaintiffs established by a preponderance of clear, satisfactory and convincing evidence that the representations were the proximate cause of Plaintiffs' damage?
_____ yes _____ no

3. **Damages**

Answer question 3, if, and only if, you answered yes to questions 1 and 2:

Actual

What amounts have Plaintiffs established as damages for fraudulent misrepresentation:

1. Tai Farms: \$ _____
2. Jade Farms: \$ _____

4. **Scope of Authority**

Answer question 4 if, and only if, you answered yes to questions 1 and 2.

Did William Mitchell make these representations while acting within the scope of his authority delegated to him by Bill Mitchell Swine Service?
_____ yes _____ no

B. Promissory Estoppel Claim

1. Have Plaintiffs established by a preponderance of clear, satisfactory and convincing evidence their claim of promissory estoppel?
_____ yes _____ no

2. **Proximate Cause**

Answer question 2, if, and only if, you answered yes to question 1.

Have Plaintiffs established by a preponderance of the clear, satisfactory and convincing evidence that these promises were a proximate cause of damages?
_____ yes _____ no

3. **Damages**

Answer question 3, if, and only if, you answered yes to Questions 1 and 2.

Actual

What amounts have Plaintiffs established as damages for their claim of promissory estoppel:

1. Tai Farms: \$ _____

2. Jade Farms: \$ _____

4. **Scope of Authority**

Answer question 4 if, and only if, you answered yes to questions 1 and 2.

Did William Mitchell make these promises while acting within the scope of his authority delegated to him by Bill Mitchell Swine Service?

_____ yes _____ no

C. Breach of Contract – De Facto General Partner Claim Against William C. Mitchell

1. Have Plaintiffs established by a preponderance of the evidence their claim of breach of contract?

_____ yes _____ no

2. **Proximate Cause**

Answer question 2, if, and only if, you answered question 1 yes.

Have Plaintiffs established by a preponderance of the evidence that Defendant's actions were a proximate cause of their damages?

_____ yes _____ no

3. **Damages**

Answer question 3, if, and only if, you answered questions 1 and 2 yes.

What amount of actual damages have Plaintiffs established for breach of contract?

1. Tai Farms: \$ _____

2. Jade Farms: \$ _____

PRESIDING JUROR